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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 928 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUJI AMTAJI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 928 of 2000

MR RK MISHRA for Petitioner No. 1

MR. H.C. PATEL, AGP, for Respondents No. 1,4

MR HS MUNSHAW for Respondents No. 2-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 24/07/2001

ORAL JUDGEMENT

1. The petitioner has filed this petition under Articles 226/227 of the Constitution of India praying for a writ of mandamus or direction quashing and setting aside the order of recovery and placing the petitioner in the lower basic pay by the order dated 23.8.1999 passed by the Additional District Health Officer, District Panchayat, Mehsana which is produced at Annexure A to this petition. The petitioner has further prayed to declare that length of 9 years of continuous service is the criterion in order to become eligible for higher scale grade. The petitioner has further prayed for declaration that the petitioner has been rightly given benefit of 9 years of higher scale grade reckoning from 24.12.1970 and accordingly further prayed that order dated 21/28/12/1992 passed by the Additional District health Officer, Mehsana, is legal, just, proper, rational and in accordance with the Government Resolutions in this regard. The petitioner has further prayed that the order of recovery reducing down the basic pay of the petitioner from Rs. 9000/- to Rs. 8300/- and paying the gratuity, commuted amount of pension and regular pension on this lower basic pay is illegal, arbitrary, unconstitutional and against the settled principles of law and therefore the whole action is liable to be quashed and set aside. He has further prayed for consequential benefit of pension and to return the amount of Rs. 51,998/- to the

petitioner with an interest at the rate of 18 per cent per annum and to pay arrears in difference of less payment of gratuity, commuted amount of pension and less payment of pension and all such other due and payable amount to be paid to the petitioner with an interest at the rate of 18% per annum counting his length of service from the date of joining the department i.e. 24.12.1970 for all the purposes whatsoever.

2. The facts giving rise to this petition are as under:

2.1 The petitioner joined the service as Block Extension Executor on 24.12.1970 at District Panchayat, Rajkot. In view of the family circumstances he requested inter district transfer from Rajkot to Mehsana. The Development Commissioner, State of Gujarat, thereafter issued a transfer order on 31.3.1987 transferring the petitioner from Rajkot to Mehsana.

2.2 The government passed order on 23.8.1999 fixing salary of Rs. 7,103/- from 4.5.1996 in the scale of Rs. 4500-125-7000. It was further directed that as per the Resolution No. 1 on pay scale which was Rs. 5500-195-9000 the salary of the petitioner was fixed at Rs. 7250/-.

3 Being aggrieved and dissatisfied with the aforesaid action of the respondents the petitioner has filed the present petition on various grounds.

3(a) When the matter was placed for hearing before this court, the court (Coram: R.M. Doshit, J) on 11.7.2000 passed the following order:

"Heard the learned advocate on interim relief.
On the facts and in the circumstances of the case, and in view of the judgement of this court reported in the matter of Ajitsinh Chaturji Rathod Vs. State of Gujarat (SCA No. 1367/95 decided on 13.9.1999 (Coram: Mr. Justice R. Balia) it is directed that the res. No. 2 DDO Mehsana will remit the sum of Rs. 51,998/recovered from the petitioner, towards the difference of salary on account of higher grade granted to the petitioner, on or before 31.7.2000 on condition that the petitioner shall furnish security to the satisfaction of the DDO for the aforesaid amount. The aforesaid payment shall be subject to the result of the petition and in the event the petitioner loses in the petition, he

shall be liable to refund the said amount within a period that may be stipulated by the court. The petitioner shall give an undertaking to the above effect to this court within a period of 15 days. Copy of the undertaking shall be furnished to the DDO."

4. When the matter was placed for hearing before this court (Coram: R.R. Tripathi, J) on 9.5.2001 it was pointed out that the matter is covered by the judgement in Special Civil Application No. 1367 of 1999 decided on 13.9.1999 by this court (Coram: R. Balia, J). However, the Letters Patent Appeal was pending against the said judgement. When again the matter was placed for hearing, this court (coram: Ms. R.M. Doshit, J) passed the following order on 21.2.2000:

"Rule. Notice as to interim relief and hearing of Rule returnable on 21.3.2000. Direct service is permitted."

5. I have been informed that undertaking has been filed and sum of Rs. 51,990/- has been paid to the petitioner in this behalf.

6. Mr. R.K. Mishra, learned advocate for the petitioner, states that the case is covered by the judgement in Special Civil Application No. 1367 of 1999 decided on 13.9.1999 by this court (Coram: R. Balia, J). In that case identical case arose before this court and this court in para 4 of the said judgement held as under:-

"Having considered carefully the rival contentions, I am of the opinion that there is no warrant to draw this inference that the petitioner has lost his services from 1964 for the purpose of reckoning seniority in the present cadre. At the relevant time, when the petitioner was recruited, the Gujarat Panchayat Act, 1961 was in force. Chapter XI of the Act of 1961 contains the provisions relating to services of Panchayat. Section 203 envisages that for the purposes of bringing about the discharge of functions and duties of Panchayats, a Panchayat services shall be constituted in connection with the affairs of the Panchayat in pursuance thereof, the panchayat service was constituted. The provisions further envisage that the panchayat service was constituted of such classes, cadres and posts and initial strength of

officers and servants in each such class and cadre as the State Government may from time to time determine and such cadres may consist of District Cadres, Taluka Cadres and Local Cadres. It also envisages that that, subject to the provisions of the Act, the State Government may make Rules regulating the mode of recruitment and providing conditions of services, appointing to the panchayat services also for providing inter district transfer of service belonging to panchayat service and the circumstances on which and the conditions on which such transfers shall be made. Gujarat Panchayat Service (Transfer of Service) Rules , 1968 governs the inter district transfers. The Rule 3 provide the conditions under which mode, the transfers can be made (i) in the public interest; (ii) in order to absorb the members becoming surplus in one District or (iii) an application is made to the District Development Officer in that behalf by the incumbent. As a condition of such transfer, Rule 4 provides, that in the case of transfer, by way of absorption of a surplus employee of another district or at one's own request, such incumbent shall not claim seniority over the person who ranks last in the post having clear vacancy in the cadre to which such member may be appointed. As a result of such transfer he takes seniority at the bottom amongst the regularly employed persons in the cadre at the place of transfer on the date of transfer. However, this does not envisage that the period of service for the purpose of seniority in all circumstances to be reckoned with effect from the date of transfer. That is to say, the period of past services in the parent district, he carries with him for the purpose of reckoning the seniority vis-a-vis a person appointed to the services of the district who comes after him. Therefore, it is not possible to accept the contention of the learned counsel for the respondents that, because of the operation of condition of inter district transfer on request, the petitioner is not entitled to compute the period of services rendered at District Panchayat, Surat for the purpose of counting seniority. The limited operation to which the rules provide affecting the seniority is vis-a-vis persons already in the employment at the time of transfer on request or at the time of absorption on being declared surplus in the parent district. He loses seniority not because

of not reckoning the period of past services rendered in parent district, but because of securing transfer on request as a condition for acceptance of such request.

6.1 The court has further observed and held in paras 6, 7, 8 and 9 thus:

"Para 6 - However, the question does not rest here. It is not envisaged anywhere that any part of the services is not to be treated for the purpose of conferring benefit of the higher grade scale, if the person is otherwise entitled to it without clubbing of the periods. The scheme does not express its applicability only to same cadre and grade, but applies to `one and same cadre and grade'. The use of expression `one and same cadre' must be interpreted in the context of object of scheme viz. to provide time bound promotion at least once on completion of a period of service, since regular appointment. If that period is completed in any one cadre, without aid of clubbing, there is nothing in the scheme which can inhibit the incumbent from availing such benefit with effect from that date. If the incumbent has completed continuous regular service of requisite period, to be accounted for in that cadre, in more than two cadres of same grade, the benefit must go to the incumbent on the earlier of the two dates. Scheme has clear object of giving one promotional chance, in case actual promotion has not come one's way, on completion of nine years service in one and the same cadre after regular appointment. The question of continuous service for seniority in inextricably woven with the thread of granting promotion to incumbent at least once on completion of nine years of regular service in one cadre to combat stagnancy. The question of taking into account aggregated period as to any two cadres will arise only in case where the services in one cadre does not satisfy the condition of requisite period of service in that cadre. However, if a person qualifies for that benefit, remaining in one and the same cadre at particular point of time, merely because of the exigencies of service later in time the incumbent has been placed in different cadre, he cannot be deprived of that benefit by confining the question of extending benefit only to the computation of period to his present cadre. What

is requisite condition is that he should have spent 9 years of regular service which is accountable for the purpose of seniority in one and the same cadre and grade, not necessarily in the present cadre. If a man has served in one district cadre for 4 years and has been transferred to another district cadre at his own request and he has served there for six years, in that event in either of the cadre, he has not completed 9 years service and he cannot take advantage unless the both are clubbed together. In the other case, a person may have served in one cadre for more than 20 years and has been transferred to another cadre by loss of seniority. In such case, he is not deprived of the benefit of the scheme which has to operate from the date of entry in the service at different points when the conditions can be said to be fulfilled. In that event if a person has fulfilled the conditions for availing the benefit at any point, be it before his services are transferred in the present cadre affecting his seniority, there is no provision in the scheme which takes away that benefit because of the subsequent events. This is also in consonance with the object with which the scheme has been introduced.

Para - 7 In the present case, the petitioner who entered the services on regular selection in 1964 in the district cadre of Surat and had completed more than 9 years of service before he was transferred to the district cadre of Mehsana in 1986 with all other benefits of service attached with it. The other benefits would include if on extension of any scheme to those services, in future, for such benefits, he carries past service with him. As the petitioner had completed 9 years in the one and same cadre while at Surat in 1973 and he has otherwise fulfilled the conditions of eligibility under the scheme, that benefit cannot be deferred unless he completes the periods of 9 years once again in the new cadre also for the purpose of becoming eligible for second time.

8. Viewed thus, notwithstanding the fact that the petitioner is not entitled to club the period of service at Surat cadre and at Mehsana Cadre, he having become eligible prior to his date of transfer to Mehsana District to the

benefits of the resolution avowed object of which is to give relief against stagnancy by offering higher grade generally on completion of nine years regular service in one cadre, he is entitled to avail the benefit of the scheme with effect from the date it became operative i.e. 1.6.1987 by treating that he has completed 9 years of regular service which could be taken into account for the purpose of seniority of the employee and rendered in the one and same cadre and grade at Surat.

9. As a result, this petition is allowed. The impugned order is quashed. The earlier order made for releasing the benefit of first higher grade to the petitioner w.e.f. 1.6.87 on completion of 9 years service on 27.5.73 shall continue to remain in force and no recovery shall be made. Recovery if any made shall be restituted to the petitioner. Rule made absolute."

7. Being aggrieved and dissatisfied with the aforesaid judgement, the Government has filed Letters Patent Appeal being LPA No. 779 of 2000 and the Division Bench of this court (Coram: J.N. Bhatt and D.P. Buch, JJ) dismissed the Letters Patent Appeal. The court in para 2 of the order observed thus:

"The learned Single Judge has assigned reasons as to why the period from 27.5.1964 to 1.3.1981 is required to be considered for the purpose of higher grade and this conclusion could not be dislodged in the course of hearing before us in this appeal. If that period is considered for the purpose of higher grade, obviously, the respondent-original petitioner will be qualified and entitled to claim benefits of first higher grade w.e.f. 1.6.1987 on completion of 9 years' service. That period was spent by the respondent-original petitioner at Surat. The learned Single Judge has, in a beautiful exposition of proposition, propounded that in so far as the length of service for the benefit of higher grade is concerned, the original petitioner is entitled to the higher grade. There is no dispute about the fact that upon completion of service of 9 years, one is entitled to higher grade. Probably, this provision in the G.R. is made to avoid stagnation in a particular pay and pay scale. Whatever policy and the underlined design, the question which is

> considered by the learned Single Judge is that mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new station, upon request, would not, in any way, adversely affect the right to claim benefit of higher grade under the relevant G.R. This proposition can, hardly, be countenanced. Therefore, when a person has completed a period of 9 years or more in the service pan, there is no dispute about this aspect that in such cases, the person is entitled to higher grade. It is not a question of seniority. It is a question of grant of giving benefit of first higher grade to the petitioner w.e.f. 1.6.1987. In our opinion, the learned Single Judge is quite justified and there is no material worth-the-candle on record, which would even, remotely, whisper or to prompt us to interfere with the impugned order, exercising power under clause 15 of the Letters Patent."

8. I have considered the case of the petitioner and also judgement in Special Civil Application No. 1367 of 1999 delivered by my learned brother (Coram: R. Balia, J) on 13.9.1999 and the judgement of the Division Bench (Coram: J.N. Bhatt and D.P. Buch, JJ). The Division Bench by its judgement delivered on 4.12.2000 in L.P.A. No. 779 of 2000 in the case of STATE OF GUJARAT Vs. A.C. RATHOD confirmed the view taken by the learned Single Judge.

8.1 In the present case the petitioner entered the service on regular selection in the year 1970 at the District Panchayat, Rajkot and had completed 9 years' service before he is transferred to District Mehsana in the year 1987 with all other benefits attached with it. The other benefits would include, if on extension of any scheme to those services, in future for such benefits, he carries past service with him. As the petitioner had completed 9 years in the one and the same cadre while at Rajkot in 1970, he has otherwise fulfilled the conditions of eligibility under the scheme, that benefit cannot be deferred unless he completes the period of 9 years once again in the new cadre also for the purpose of becoming eligible for second time.

8.2 In view of the same, this petition is allowed. The impugned order by which the petitioner is placed in lower basic pay scale on 23.8.1999 be declared illegal and liable to be quashed and set aside.

8.3 In view of the aforesaid circumstances, I declare

and hold that length of 9 years of continuous service is the criterion in order to become eligible for higher scale grade and accordingly, the petitioner has been rightly given benefit of 9 years of higher scale grade reckoning fro 24.12.1970. In view of the same, the order passed by the Additional District Health Officer on 21/28-12-1992 is legal and valid.

8.4 In view of the aforesaid circumstances, the order of recovery reducing down the basic pay of the petitioner from Rs. 9,000/- to Rs. 8,300/- and paying the gratuity, commuted amount of pension and regular pension on this lower basic pay is illegal and against the settled principles of law particularly the same is contrary and inconsistent with the orders of the Single Judge and Division Bench, which I have referred to hereinabove. In view of the same, I further declare that the petitioner's benefit of gratuity, commuted amount of pension and the less payment of pension is illegal, arbitrary and unconstitutional.

8.5 As regards, the petitioner's prayer regarding return of the amount of Rs. 51,998/- by the respondents, I do not grant the same because the same has been granted by the order dated 11.7.2000 by this court (Coram: R.M. Doshit, J).

9. In the result, the present petition is allowed. Rule is made absolute with no order as to costs.

(K.M. MEHTA, J)

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